remaining in the register under s 33 of the Trade Marks Act. The defendants also contend there has been no use in good faith of the trade mark by either of the plaintiffs. Therefore s 46 of the Act applies. The other contention is that the assignment is invalid under s 55(2) of the Act.

Using the tests which I have earlier referred to and judging from the sound and appearance of the two words 'Minlon' and 'Winlon' I find that the defendants' mark 'Winlon' so nearly resembles the plaintiffs' trade mark 'Minlon' as to be likely to deceive or cause confusion. I also find that the mark 'Winlon' used by the defendants would lead persons of average intelligence into accepting the knitting yarns of the defendants as and for the knitting yarns of the plaintiffs.

Section 33(3)(a) reads as follows:

> (3) When the facts mentioned in para (a) or (b) of sub-s (2) are proved with respect to any word or words then:
> (a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed for the purpose of s 45 to be an entry wrongly remaining in the Register;

But under s 45 of the Act the court can only make an order for the rectification of the register 'on the application in the prescribed manner by any person aggrieved...'.

Similarly under s 46 of the Act the court can only order a trade mark to be removed from the register on application.

Section 55(2) of the Act states as follows:

> (2) Notwithstanding sub-s (1), an assignment of a registered trade mark without goodwill whether before or after the commencement of this Act is invalid if the trade mark has not at any time before the assignment been in use in good faith in Malaysia by the assignor or his predecessor in title except that this subsection does not apply where –
> (a) the trade mark was registered with the intention that it shall be assignable to a body corporate yet to be formed and the trade mark has been assigned; or
> (b) the trade mark was registered with the intention that a person shall be permitted to use it as a registered user and such registered user has been registered in respect of the trade mark within six months after the registration of the trade mark and has used that trade mark within that period.

But under s 50 of the Act a permitted use of a registered trade mark shall be deemed to be use by the registered proprietor of the trade mark. Minlon Industries (M) Sdn Bhd had been using the mark under the licence agreement dated 1 June 1982.

I find that there is a serious question to be tried. I will next consider the balance of convenience. I find that if the plaintiffs succeed they would not be adequately compensated by damages. I also find that if the plaintiffs fail the defendants would be adequately compensated under the plaintiffs' undertaking in damages. As disclosed in the affidavit of Choong Koy, a director of the second plaintiff, the paid-up capital of the second plaintiff was $450,000. The annual turnover is about $6.3 m. The plaintiffs would be able to pay any award of damages against them.

For the above reasons I granted the interim injunction in terms of the application and costs.

Application allowed.

Solicitors: *Skrine & Co*; *Sharma & Jaafar*.

Reported by *Wong Kim Fatt*

Low Soon Mooi v Menteri Hal Ehwal Dalam Negeri & Anor

HIGH COURT (PENANG) – SUIT NO 54-13-88
WAN ADNAN J
28 MARCH 1989

Constitutional Law – Whether Dangerous Drugs (Special Preventive Measures) Act 1985 unconstitutional – Federal Constitution, arts 43A(2), 149 & 151(3)

Preventive Detention – Writ of habeas corpus – Whether failure to comply strictly with the law – Deputy Minister acting on behalf of Minister – Whether independent inquiry – Mala fides – Whether Dangerous Drugs (Special Preventive Measures) Act unconstitutional – Disclosure of reasons for detention – Federal Constitution, arts 43A(2), 149 & 151(3) – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 5(2), (3) & 6

This is an application for an order that a writ of habeas corpus be issued for the release of the applicant. The applicant was detained pursuant to an order made under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The applicant raised six arguments at the hearing: (a) there was a failure to comply strictly with the requirement of the law; (b) the Deputy Minister had no power to act on behalf of the Minister; (c) there was a failure of the inquiry officer to conduct an independent inquiry; (d) mala fides on the part of the police officer; (e) that the Act is unconstitutional; (f) that art 151(3) of the Constitution is not applicable.

Held, dismissing the application:

(1) The Minister must be satisfied in two matters. Although the word 'berpuashati' was mentioned only once, it was clear from the reading of the detention order that satisfaction was in respect of both matters. Further the need for the second satisfaction arises only if there had been satisfaction in respect of the first matter.

(2) Article 43A(2) of the Federal Constitution clearly states that Deputy Ministers have the same powers as the Ministers.

(3) Section 5(3) of the Act gives the inquiry officer a discretion whether to exercise his power.

(4) No mala fides was found against the police officer. Further, to render the detention order invalid, what has to be made out is not mala fides on the part of the police officer but on the part of the detaining authority.

(5) The Act was enacted pursuant to art 149 of the Federal Constitution and therefore constitutional.

(6) Section 14 of the Act merely restates the provisions of art 151(3). Though the detention under the Act is only in the interest of public order, when it comes to disclosure of facts, the test is the same as in the Constitution and the Internal Security Act, ie whether the disclosure is against the national interest.

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Civil Appeal No 111 of 1988.]

Cases referred to

1 *Re Datuk James Wong Kim Min* [1976] 2 MLJ 245 (refd)
2 *Yeap Hock Seng alias Ah Seng* v *Minister of Home Affairs, Malaysia* [1975] 2 MLJ 279 ((folld)
3 *Lim Kit Siang* v *Menteri Dalam Negeri & Ors* Penang High Court Criminal Application No 54-8-88 (unreported) (refd)
4 *Inspector-General of Police* v *Tan Sri Raja Khalid bin Raja Harun* [1988] 1 MLJ 182 (refd)

Legislation referred to

Federal Constitution arts 43A(2), 149, 151(3)
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 5(2), (3), 6

YN Ngeow for the applicant.
Abdul Hamid b Hj Mohamed for the respondent.

Cur Adv Vult

Wan Adnan J: This is an application made for an order that a writ of habeas corpus be issued for the release of the applicant.

The applicant was detained pursuant to an order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). Section 6(1) of the Act reads as follows:

> 6(1) Whenever the Minister, after considering –
>
> (a) the complete report of investigation submitted under subsection (3) of section 3; and
>
> (b) the report of the Inquiry Officer submitted under subsection (4) of section 5,
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years from the date of such order.

The detention order is in the following form:

Akta Dadah Berbahaya
(Langkah-langkah Pencegahan Khas), 1985

(Akta 316)

Perintah Tahanan
(Seksyen 6(1))

Kepada:

Penguasa,
Pusat Pemulihan Akhlak,
Pulau Jerejak, Pulau Pinang.

Ketua Polis Negara,
Bukit Aman,
550560 Kuala Lumpur

Semua Pegawai Polis Di Raja Malaysia yang berkenaan.

Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.

Nama	*Nombor Kad Pengenalan*
Low Soon Mooi (P)	7762037 (M)

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah Seksyen 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas), 1985, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 4 haribulan Disember 1987 di Pusat Pemulihan Akhlak, Pulau Jerejak, Pulau Pinang, atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 2 haribulan Disember 1987

TT Dato' Megat Junid B Megat Ayob
(Dato' Megat Junid Bin Megat Ayob)
Timbalan Menteri Dalam Negeri,
Malaysia

(Rujukan: KDN.S.205/1182/5-305)

The statement of the grounds on which the order was made and the allegations of fact on which the order was based that was served on the applicant as required by s 9(1)(b) of the Act is in the following form:

Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985
Nama Orang Tahanan:

Low Soon Mooi (P) – No Kad Pengenalan: 7762037 (M)

Alasan-alasan Yang Atasnya Perintah Itu Dibuat:

Bahawa kamu pernah ada terlibat dengan aktiviti yang berhubung dengan pengedar dadah berbahaya.

Tuduhan-tuduhan Yang Perintah Itu Berasaskan:

1 Bahawa kamu didapati bergiat mengedar heroin sejak awal 1982 di kawasan Kampung Batu Bata, Jalan Ipoh, Kuala Lumpur. Kamu mengedar dadah heroin dalam bentuk tiub dengan harga $4.00 dan $4.50 satu tiub dan bentuk peket berharga $65.00 sepeket.

2 Bahawa kamu telah bergiat menyewakan bilik-bilik rumah setinggan kepunyaan kamu di Kampung Batu Bata, Jalan Ipoh, Kuala Lumpur kepada penagih dan pengedar-pengedar heroin untuk dijadikan tempat menghisap, mengedar dan memproses (repack) heroin dari peket ke bentuk tiub.

3 Bahawa kamu mengenakan bayaran sewa di antara $2.00 hingga $7.00 ataupun kamu minta heroin 1-3 tiub sebagai ganti sewaan bagi sehari, untuk satu bilik kepunyaan kamu kepada penagih dan pengedar yang menggunakan bilik untuk menghisap dan mengedar dadah heroin.

4 Bahawa kamu didapati juga bergiat aktif mengedar dadah heroin dalam bentuk tiub dan mampu mengedar di antara 10-60 tiub sehari kepada penagih tempatan.

Dengan Arahan
Menteri Dalam Negeri

(Abdul Aziz Bin Muhamad)
Penolong Setiausaha
Kementerian Dalam Negeri

Tarikh: 2 Disember 1987

(Ruj: KDN.S.205/1182/5-305)

At the hearing of the application, counsel for the applicant had raised only the following points:

(i) Failure to comply strictly with the requirement of law.
(ii) Deputy Minister has no power to act on behalf of Minister.
(iii) Failure of inquiry officer to conduct an independent enquiry.
(iv) Mala fides.
(v) Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1988 (Act A707) is unconstitutional.
(vi) Article 151(3) of the Constitution does not apply.

Failure to comply strictly with the requirement of law

It was submitted that there was a failure to comply strictly with the provisions of s 6 of the Act. Under the section the Minister was required to be satisfied with two matters, namely, the 'person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs' and that 'it is necessary in the interest of public order that such person be detained.' It was submitted that the detention order states that the Minister was satisfied only with the latter and therefore is invalid.

Lee Hun Hoe CJ (Borneo) in *Re Datuk James Wong Kim Min*[1] had said:

> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty.

Reading the section and the detention order, I do not find any failure of strict compliance with the requirements of the section. The detention order says: 'Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.' It is true that the word 'berpuashati' is mentioned only once but reading the paragraph as a whole it is clear that the satisfaction was in respect of both matters. Further, the need for the second satisfaction arises only if there has been satisfaction in respect of the first matter. Therefore if the Minister says he is satisfied with the second matter he must have been satisfied with the first matter.

Deputy Minister has no power to act on behalf of Minister

It was submitted that the section requires the Minister to be satisfied and the detention order says that it was the Minister who was satisfied but the affidavit of Dato' Megat Junid bin Megat Ayob discloses that it was the Deputy Minister who was satisfied.

Article 43A(2) of the Federal Constitution clearly states that Deputy Ministers have all the powers of the Ministers. It provides:

> (2) Deputy Ministers shall assist Ministers in the discharge of their duties and functions and for such purpose shall have all the powers of Ministers.

In the Interpretation Act 1967 'Minister' means 'A Minister of the Government of Malaysia including the Prime Minister and a Deputy Minister.'

Failure of inquiry officer to conduct independent inquiry

It was submitted that under s 5(3) of the Act the inquiry officer was legally obliged to hold an enquiry.

Section 5(3) states as follows:

> (3) An inquiry officer may, in his discretion, for the purpose of subsection (2) –
> (a) ...

Section 5(2) states:

> (2) Upon receiving the report under subsection (3) of section 3, the inquiry officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

In my view the inquiry officer has a discretion. If from the complete report of investigation submitted to him under s 3(3) of the Act he is satisfied that there are reasonable grounds for believing that the person has been

associated with drugs there is no need for him to exercise his powers under s 5(3). In this case the inquiry officer was satisfied by the consideration of the report. He has duly discharged his function.

Mala fides

The applicant alleged mala fides on the part of the police officer Zakaria. I found no mala fides established against the officer. Further, to render the detention order invalid, what has to be made out is not mala fides on the part of a police officer but mala fides on the part of the detaining authority, ie the Minister. In *Yeap Hock Seng alias Ah Seng* v *Minister of Home Affairs, Malaysia*[2] Abdoolcader J (as he then was) said:

> But where an order of detention is challenged on the ground of *mala fides*, what has got to be made out is not the want of *bona fides* on the part of the police, but the want of *bona fides* as well as the non-application of mind on the part of the detaining authority which for this purpose must be taken to be different from the police.

There is no allegation of mala fides on the part of the Minister and there is no such evidence.

Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1988 (Act A707) is unconstitutional

This point had already been raised in *Lim Kit Siang* v *Menteri Dalam Negeri & Ors.*[3] In this case the learned judge (Mohamed Dzaiddin J) held that the Internal Security (Amendment) Act 1988 (Act A705) was constitutional. The Dangerous Drugs (Special Preventive Measures) Act 1985 and the Amendment Act (1988) (Act A707) were also enacted pursuant to art 149 of the Federal Constitution. I agree with the decision of the learned judge and hold that the Act A707 is constitutional.

Article 151(3) of the Federal Constitution does not apply

It was contended that the Minister ought to disclose all facts upon which the Minister's decision was made as art 151(3) did not protect the non-disclosure. It was argued that this was so because the detention under s 6(1) of the Act was only 'in the interest of *public order*' whereas the protection under art 151(3) was in respect of facts 'whose disclosure would in its opinion be against *the national interest*'. (emphasis added)

It was further contended that there is a distinction between a detention under the Act and a detention under s 8 of the Internal Security Act 1960. Whereas the detention under the Internal Security Act is in the interest of national security the detention under the Act is only in the interest of public order. Therefore art 151(3) does not apply to a detention under the Act as it does to a detention under the Internal Security Act (see *Re Tan Sri Raja Khalid bin Raja Harun; Inspector General of Police* v *Tan Sri Raja Khalid bin Raja Harun*[4]).

I do not agree with the contention. Section 14 of the Act protects against the disclosure of facts which are against the national interest. Similar provision is contained in s 16 of the Internal Security Act. The provisions of the two sections merely restate the provision of art 151(3). When it comes to disclosure of facts the test is 'national interest'. In my view there is no distinction between the detention under the Act and detention under the Internal Security Act in this respect. Though the detention under the Act is only in the interest of public order, when it comes to disclosure of facts the test is the same and that is, whether the disclosure is against the national interest.

I find that the applicant has failed to show that the detention is unlawful. I therefore dismissed the application.

Application dismissed.

Solicitors: *Ngeow & Maurice Gomes.*

Reported by *Yap Shao Sin*

Dominic Daung Ak Saba v Mohamad Hamden bin Dollah & Ors

HIGH COURT (KUCHING) – CIVIL APPEAL NO KG 4 OF 1988
HAIDAR J
25 MARCH 1989

Land Law – Title issued to first respondent by Settlement Officer – Appellant's appeal against this before First Class Magistrate dismissed – Whether First Class Magistrate had jurisdiction to hear appeal – Land Code (Cap 81), ss 2, 5, 18, 84, 85, 88, 91, 93, 94, 95, 96 & 102

The appellant brought an appeal before the First Class Magistrate against the decision of the Settlement Officer to issue title of land under s 18 of the Land Code (Cap 81) ('the Code') to the first respondent. At the hearing of the appeal before the First Class Magistrate, counsel for the first respondent raised two preliminary objections, viz (a) that the court of the Magistrate of the First Class was not the proper forum or venue for the appeal to be adjudicated under the Code as the appellant's rights, if any, were contractual in nature and not under native customary rights which could be settled under the Code; and (b) that the land forming the subject matter of the appeal was not the same land as that claimed by the appellant.

The First Class Magistrate ruled in favour of the first respondent on ground (a) alone and dismissed the appeal purportedly for lack of jurisdiction with costs to be taxed and was of the view that ground (a) alone was sufficient for him to dismiss the appeal.

Held, dismissing the appellant's appeal:

(1) There are two parts to s 102 of the Code, pursuant to which any person aggrieved by any act or decision of the